Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 381 of 2003

United India Insurance Company Ltd.,
through its Divisional Manager,
Divisional Officer, Nainital Road,
Haldwani, District-Nainital. ..... Appellant.

Versus

1. Smt. Abbal Devi Aswal W/o late Dharam Singh Aswal,
2. Sandeep Aswal S/o late Dharam Singh Aswal,
3. Sri Jagdish Aswal S/o late Dharam Singh Aswal,
   All Residents of B-11 Lane No.1 Shastri Nagar,
   Haldwani Road, Dehradun.
4. Sri Alam Khan S/o Shri Mukhtar Hussain,
   R/o 65 Yamuna Colony, Dehradun,
   (Owner of Maruti Van No. UP 07 L),
5. Sri Jagdish Singh S/o Sri Chhat Singh Tyagi
   R/o 1-102, 24 F.R.I. Dehradun (Driver of Van).

..... **Respondents.**

.....

Sri D.S. Patni, learned counsel for the appellant,
Sri Sharad Sharma & Sri K.K. Shah, learned counsel for the respondents.

Dated: 31st Aug., 2004.

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This appeal has been preferred against the judgment and award dated 29.08.2003 passed by Motor Accident Claims Tribunal/II Addl. District Judge, Dehradun in the Motor Accident Claim Petition No. 213 of 2001, Smt. Abbal Devi Aswal and others versus Sri Alam Khan and others, whereby the claim petition of the claimants has been allowed for a compensation of Rs. 10,84,448/- against the Opp. Party No.3-United India

Insurance Company alongwith interest at the rate of 9% per annum from the date of application till the date of final payment.

2- Brief facts giving rise to this appeal are that on 14.07.2001 deceased Dharam Singh Aswal was going with his Scooter No. U.P. 07 A-9346 from Mussoorie to his residence Shastri Nagar. At about 3.30 p.m when he reached near Prem Complex, Haridwar Road, a Maruti Van No. UP 07L-0275, which was being driven by its driver Opp. Party No.2, came and hit the scooter of Dharam Singh Aswal. In the said accident Dharam Singh Aswal sustained grievous injuries. He was taken to Doon Hospital, from where he was shifted to Combined Medical Institute, Haridwar Road, Dehradun. From there he was referred to A.I.I.M.S., Delhi for better treatment. When he was taking to Delhi, he died on the way at about 9.00 p.m. on the same day due to the said injuries. The deceased was 54 years old at the time of accident and he was employed as Assistant Teacher in the R.N. Bhargava Inter College, Musssoorie, Dehradun. The monthly salary of deceased Dharam Singh Aswal was R. 12, 221/- and he was income tax payee. The claimants, who are legal heirs of the deceased, field the claim petition before the Tribunal for compensation of Rs. 24,43,172/- on account of loss of dependency due to death of Dharam Singh Aswal.

3- The Opp. party Nos. 1 & 2, owner and driver of the offending Maruti Van respectively filed joint written statement denying the allegations of the claim petition. It was also alleged that the said Maruti Van was insured with the Opp. party No. 3-United India Insurance Company on the date of accident. The Opp. party No. 3 in its written statement also denied the allegations of the claim petition. The insurance of the offending Maruti Van with it was also

denied. It was alleged that the accident occurred due to rash and negligence driving of the scooter by the deceased himself. On the pleadings of the parties, the Tribunal framed the necessary issues and after recording evidence allowed the claim petition against the Insurance Company accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant pressed the appeal mainly on the ground that the compensation awarded is highly excessive and exorbitant. We have gone through the entire material on record and perused the impugned judgment. The Tribunal on the basis of evidence on oath of P.W.1 Jagdish Aswal held the age of the deceased 54 years 8 months and 19 days. We find that on the basis of the evidence, the learned Tribunal has rightly held the income of the deceased and calculated the loss of dependency of the aforesaid amount. The multiplier of 11 has also rightly been applied according to the second schedule appended to Sec. 163-A of the Motor Vehicles Act. Nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal. Hence the ground of challenge is misconceived.

5- The appeal has no force and is dismissed. The order impugned in this appeal is affirmed. There shall be no order as to costs. The amount, if deposited in the appeal in this Court, shall be remitted to the Motor Accident claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P. Singh